

REMARKS/ARGUMENTS

Prior to entry of this Amendment, claims 10-38 and 53-58 were pending for examination, with claims 1-9 and 39-52 having been withdrawing pursuant to a restriction/election requirement mailed June 21, 2006. This amendment amends claims 10, 11, 15-20, 35, 36 and 56, and adds new claims 59-62. No claims have been canceled. Hence, after entry of this amendment, claims 10-38 and 53-62 will stand pending for examination. Claims 10, 21, 35 and 53 are independent claims. The applicant respectfully requests reconsideration of the pending claims, for at least the reasons presented below.

Claim Amendments

Claims 10, 11, 15-20 and 35 have been amended to remove the term “transportable” and to consistently recite “fluid container.” Claims 36 and 56 have been amended to correct typographical errors. It is submitted that these amendments do not narrow the scope of the amended claims.

New claims 59-62 have been added. Support for the new claims can be found throughout the application, including, inter alia, in paragraphs 0041-42, 0044 and 0053 of the specification.

Informalities

The Office Action has objected to claims 10-20 and 35-38 as being inconsistent, in that Applicant switches between the terms “transportable fluid container” and “fluid container.” As noted above, claims 10-20 and 35-38 have been amended to consistently recite “fluid container.” It is believed that these amendments overcome the objections, and reconsideration of the amended claims is respectfully requested.

35 U.S.C. § 112 Rejections

The Office Action has rejected claims 1-38 and 53-58 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the office action noted that “[in] claims 10, 21 and 35, the applicant is only claiming to allow the user to dispense the

industrial fluid. However, as it is currently disclosed the method of allowing a user to dispense the industrial fluid fails to be positively recited.” The Applicant respectfully traverses these rejections.

As described in the specification, various embodiments of the invention allow the user to dispense fluid in a variety of ways. Merely by way of example, in some embodiments (as described in the specification and recited in claims 32-34, for example), allowing the user to dispense fluid might involve an authorization transaction (such as, inter alia, transmitting an authorization to dispense fluid from the fluid container). (It should be noted, however, that in other embodiments, a fluid distribution system may be configured to allow a user to dispense fluids without prior authorization.) It respectfully submitted that there a variety of ways in which a fluid distribution system can be configured to allow a user to dispense fluids (many of which are disclosed in the application), and that § 112, ¶ 2 does not require the recitation of any specific method for allowing the user to dispense fluids. Accordingly, reconsideration of the rejections under § 112, ¶ is respectfully requested.

35 U.S.C. §103 Rejection, Benson in view of Titus

The Office Action has rejected claims 10-38 and 53-58 under 35 U.S.C. § 103(a) as being unpatentable over U. S. Patent No. 5,494,191 to Robert D. Benson (hereinafter “Benson”) in view of U. S. Patent No. 5,636,653 to John S. Titus (hereinafter “Titus”). In order to establish a prima facie case that a rejected claim is obvious under § 103(a), the office action must meet three requirements: first, the cited references must collectively teach each element of the rejected claim; second, the rejection must identify in the prior art a suggestion or motivation to combine the references in the contemplated manner; and third, there must be a reasonable expectation of success in the combination. MPEP § 2143. It is respectfully submitted that the office action meets none of these requirements in rejecting claims 10-38 and 53-58, and the rejections therefore are traversed.

1. The Benson/Titus combination does not teach each element of any pending claim.

a) Claim 10

First, even if Benson and Titus could be combined (which, as discussed below, they cannot), the combination would fail to teach every element of any pending claim. Merely by way of example, consider claim 10, which recites, inter alia, “providing at the user’s location a fluid container having contained therein an industrial fluid, wherein the fluid container and the industrial fluid contained therein are owned by the fluid supplier.” Titus fails even to teach a fluid container at all. Instead, Titus teaches a system of demand and supply pipes, which has nothing to do with a fluid container. *See, e.g.*, Titus, c. 2, ll. 35-43 , c. 6, ll. 34-38. For its part, Benson does teach a fluid container, but Benson provides no teaching or suggestion that the fluid container, or the fluid therein, might be owned by a fluid supplier, rather than the user at whose location the fluid container is provided.

Claim 10 also recites, inter alia, “as the amount of industrial fluid is being dispensed from the fluid container, determining the amount of industrial fluid dispensed. The office action admits that Benson fails to teach this element, but contends that Titus does so. As noted above, however, the system of Titus does not even employ a fluid container, but rather a system of supply and demand pipes. Accordingly, while Titus might teach determining an amount of natural gas passing from a supply pipe to a demand pipe, it reasonably cannot be read as either teaching or suggesting measuring an amount of fluid as it being dispensed from a fluid container.

b) Claim 21

Similarly, the combination of Benson and Titus fails to recite every element of claim 21. For instance, claim 21 recites “providing a fluid distribution station at the user’s location, the fluid distribution station being configured to be coupled with at least one fluid container,” “providing at least one fluid container having disposed therein a fluid for distribution, the fluid being owned by the fluid supplier” and “coupling the at least one fluid container with the fluid distribution station.” As noted above, neither Benson nor Titus provides any teaching

or suggestion that a fluid container might be located at the user's location but contain fluid owned by a fluid supplier. Similarly, neither Benson nor Titus provides any teaching or suggestion that a fluid container might be coupled with a fluid distribution station at a user's location but contain fluid owned by a supplier.

Claim 21 further recites "as the fluid is being dispensed, determining with the fluid distribution station the amount of fluid dispensed from the fluid container." Once again, the office action concedes that Benson fails to teach or suggests this element, but argues that Titus provides the disclosure missing from Benson. As noted above, however, Titus provides no teaching or suggestion of determining an amount of fluid dispensed from a fluid container. Moreover, this element of claim 21 specifically recites that the fluid distribution station makes this determination; the office action identifies (and Titus discloses) nothing that could be construed to be the fluid distribution station recited by claim 21, which is, as recited by claim 21 "configured to be coupled with at least one fluid container." Hence, the combination of Benson and Titus fails to teach or suggest every element of claim 21.

c) Claim 35

Claim 35 recites, inter alia, "[a] fluid container having contained therein an industrial fluid owned by fluid supplier." Neither Benson nor Titus teaches this element. Notably, while the office action argues that Benson teaches that the industrial fluid contained in a fluid container is owned by a fluid supplier, the office action fails to cite any portion of Benson that provides such disclosure, and a review of Benson provides no such teaching. Titus, on the other hand, does not even disclose industrial fluids, let alone a fluid container having contained therein an industrial fluid. In fact, the only fluid disclosed by Titus is natural gas. Hence, Titus and Benson, whether taken individually or in combination, failed to disclose this element.

Claim 35 also recites, "as the fluid is being dispensed, determining with the fluid distribution station the amount of fluid dispensed from the fluid container." As noted with respect to claim 21, neither Benson nor Titus teaches or suggests this element either.

d) Claim 53

Claim 53 is a *Beauregard* claim reciting some elements substantially different from those recited by claim 10. Nonetheless, the office action treats claim 53 and claim 10 collectively, and in doing so fails even to address the specific elements of claim 53. Unsurprisingly, the office action fails to establish that the combination of Benson and Titus teach every element of claim 53. As an initial matter, it should be noted that Benson does not even suggest the use of any type of electronics at all, so it is difficult to ascertain how Benson might be applicable to claim 53 in any respect.

Specifically, claim 53 recites instructions that are executable by a computer processor to "receive information about a fluid being dispensed from a fluid distribution station." Assuming, *arguendo*, that the cart of Benson might be considered a fluid distribution station (a position the applicant does not concede), Benson provides no teaching or suggestion that this fluid distribution station might be configured to provide data to a computer, let alone any teaching of instructions for computer processor to receive information about fluid being dispensed from the fluid distribution station of Benson. Presumably, the office action relies on Titus for this element. Titus, however, does not even teach a fluid distribution station, so Titus necessarily fails to teach or suggest receiving any information from a fluid distribution station.

Similarly, claim 53 further recites instructions to "determine the amount of fluid dispensed from the fluid distribution station." Because Titus fails to teach a fluid distribution station, Titus necessarily fails to teach instructions to determine the amount of fluid dispensed from such a fluid distribution station. Further, as noted above, to the extent that Benson might teach a fluid distribution station, Benson fails to teach or suggest that such a station provides any data to a computer, so it would be impossible to read Benson as teaching any type of instructions for a computer processor to determine the amount of fluid dispensed from a fluid distribution station.

e) Dependent claims

Claims 11-20, and 60-62 ultimately depend from claim 10, claims 22-34 and 63 ultimately depend from claim 21, claims 36-38 and 64 ultimately depend from claim 35, and

claims 54-59 ultimately depend from claim 53. Because, as noted above, the combination of Benson and Titus fails to teach every element of either claim 10, claim 21, claim 35, or claim 53, those references necessarily fail to teach each element of any of claims 11-20, 22-34, 36-38, or 54-64.

In addition, however, many of the dependent claims recite additional novel features that are neither taught or suggested by the combination of Benson and Titus. For example, claim 11 recites "wherein providing at the user's location a fluid container having contained therein an industrial fluid comprises transporting the fluid container to the user's location while the fluid container has contained therein the industrial fluid." The office action apparently takes official notice that "it is an old and well-known as this practice for a fluid supplier to transport a transportable container to the user's location while the transportable container has contained therein industrial fluid." (Office Action, at 4) The applicant respectfully traverses this official notice, and requests, pursuant to MPEP § 2144.03, documentary evidence to support this position.

As another example, claim 15 recites "wherein accounting for the industrial fluid dispensed from the fluid container comprises transferring from the fluid supplier ownership of the industrial fluid dispensed from the fluid container." With regard to this claim, the office action again appears to take official notice that "it is an old and well-known business practice to transfer the ownership of the dispensed industrial fluid from the supplier to the user. An example would be a gasoline station in which the consumer would be the owner of the dispensed gasoline which was previously owned by the gasoline station. Once the gasoline has been dispensed it is old and well-known that the consumer must then pay for the dispensed gasoline."

The Applicant respectfully traverses this official notice as well and requests documentary evidence pursuant to MPEP § 2144.03. Specifically, it should be noted that the gas station example provided by the office action is inapposite. Claim 15 depends from claim 10, which recites, inter alia, "providing at the user's location a fluid container having contained therein and industrial fluid, wherein the fluid container and the industrial fluid contained therein are owned by the fluid supplier" (emphasis added). In the gas station example cited by the office action, even assuming a gas pump could be considered a fluid container, the gas pump is located

at the gas station (which is the location of the fluid supplier), rather than at the consumer's (user's) location.

As another example, claims 18 and 25 each recite "determining an amount of . . . fluid remaining in the fluid container." The office action takes the position that "it is inherently included that if the container has a given volume in which a fluid is contained therein it would [be] obvious to know how much fluid is remaining if a given amount of fluid has been dispensed." As noted above, however, the system of Titus does not employ a fluid container, but rather a network of pipes. Accordingly, the system of Titus would be unable to determine an amount of fluid remaining in a fluid container, since the pipe system of Titus would not comprise a fixed volume.

Claim 19 recites a "if the amount of industrial fluid remaining in the fluid container is less than a threshold value, recording in order for additional industrial fluid." The office action argues that col. 15, lines 20-25 teaches this element and the portion of Titus, however, has nothing do with recording an order for additional fluid. (Indeed, because Titus provides natural gas through a supply pipe system rather than in fluid containers, the supply to the pipe presumably is effectively infinite, which would render unnecessary any procedure for ordering additional fluid.) Instead, decided portion of Titus deals with a safety alarm system, which activates when the demand pressure in the system of Titus falls below a certain level. This falling demand pressure would provide no indication that additional fluid was needed; it is not surprising, then, the Titus neither teaches nor suggests that the safety alarm system might be used to record in order for additional fluid.

The rejection of claim 20, which recites "wherein recording in order for additional industrial fluid comprises recording in order for an additional fluid container having contained therein the additional industrial fluid," appears the based on the same official notice as claim 11, and that official notice is traversed for the reasons discussed above.

Claim 23 recites, inter alia, wherein they at least one fluid container is a plurality of fluid containers. Claim 23 was rejected on the same grounds as claim 15, discussed above. Notwithstanding the improper official notice, the gas station example cited in rejecting claims 15 and 23 is wholly inapposite. Taken with claim 21, from which it depends, claim 23 effectively

recites coupling a plurality of fluid containers with a fluid distribution station. Benson neither teaches nor suggests that a plurality of fluid containers could be coupled with a single fluid distribution station, and, as noted above, Titus fails to teach even or suggest even a single fluid container.

Claim 27 recites "wherein providing a fluid distribution station comprises leasing the fluid distribution station to the user." In rejecting this claim the office action cites no prior art but argues that "it would have been obvious that if the supplier is the owner of the distribution station that has bee[n] provided to the user that wouldn't further the user is renting/leasing the distribution station from the supplier. Even assuming this conclusion is true, it presupposes that either Titus or Benson teaches providing a fluid distribution station (at a user's location) that is owned by a fluid supplier. Neither reference provides any support for this proposition. Hence, the rejection of claim 27 is believed to be improper.

In rejecting claim 29, the office action appears to take official notice that "it is old and well-known to have the means of locomotion for distribution station for those distribution stations that contain large containers containing a large quantity of a particular fluid." This official notice is respectfully traversed, and documentary evidence for the stated proposition is hereby requested. In rejecting claim 21, from which claim 29 depends, the office action relies on Benson, which teaches a small tank 10 mounted on a cart 50, which is clearly designed to be transported by hand. *See* Benson, Fig. 6. Benson reasonably cannot be read as teaching a distribution station "that contain[s] large containers containing a large quantity of a particular fluid," so even assuming the official notice taken in rejecting claim 29 is proper, the office action has identified no suggestion or motivation to modify Benson to include means of locomotion.

Claim 32 recites "transmitting from the control terminal and authorization to dispense fluid from the fluid container," while claim 33 recites "wherein the authorization to dispense fluid from the fluid container specifies an amount of fluid to be dispensed," in claim 30 for recites "transmitting from the fluid distribution station a request for an authorization to dispense fluid from the fluid container." In rejecting these claims, the office action again cites col. 15, lines 14-21 of Titus. As noted above, this portion of Titus pertains to a safety alarm that

is triggered when the demand pressure in a demand pipe falls below a certain level. This passage of Titus provides no teaching or suggestion of any of the elements of claims 32-34.

As yet another example, claim 54 for recites "wherein at least part of the computer software product is configured to be executed on a processor incorporated within a fluid distribution station." As noted above, even assuming the fluid cart 50 of Benson might be considered a fluid distribution station, Benson does not disclose any sort of processor or other electronics incorporated within such a fluid cart, and Titus does not teach a fluid distribution station at all. Accordingly, even if combined, Benson and Titus fail to teach the elements of claim 54.

f) New claims 59-64

It is respectfully submitted that Titus and Benson, whether taken individually or in combination, fail to teach or suggest any of the elements of claims 59-64, and as claims are believed the allowable even assuming the independent claims from which they depend continue to be rejected.

Accordingly, it is respectfully submitted that Benson and Titus collectively failed to teach or suggest each element of any pending claim, and that the rejections of claims 10-38 and 53-58 under §103(a) should be reconsidered for at least this reason.

2. The cited references provide no suggestion or motivation to combine Benson with Titus.

Even assuming that Benson and Titus collectively did teach each element of any pending claim (which, as noted above, they do not), there would be no suggestion or motivation to combine the references in the manner contemplated by the office action. The office action supposes that "it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Benson in view of the teachings of Titus to include a fluid monitoring system in order for the user and supplier to know the amount of fluid has been dispensed." (Office Action, at 4)

The Applicant respectfully submits that this reasoning is flawed, for several reasons. First Benson and Titus deal with entirely different subjects. While both deal generally with "fluid distribution," Benson discloses "[a] container in dispenser for fluids, especially hydraulic in engine oil fluids for aircraft" (Benson, Abs.), while Titus discloses a piping system with a novel flow measurement system for gases, such as natural gas, based on a differential between a supply pressure in a demand pressure. Titus, Abs., col. 7, ll. 7-24. Neither Titus nor Benson provide suggestion that the gas metering system of Titus might provide any benefit in the fluid cart of Benson. Indeed, Benson never even suggests the desirability of being able to measure fluids while they are being dispensed. For its part, Titus fails to suggest that its measuring system might be appropriate in a fluid cart for dispensing hydraulic fluids and oils to aircraft (or, for that matter, appropriate for anything but large scale distribution systems such as gas distribution systems, electricity distribution systems, and the like.

Indeed, as Benson never even makes a distinction between a fluid user and a fluid supplier, the rationale proposed by the office action suffers from impermissible hindsight, in that it presumes a need "for the user and supplier to know the amount of fluid that has been dispensed." Accordingly, the office action has not identified any reasonable suggestion or motivation to combine Benson with Titus, and it is respectfully submitted that the rejections under §103(a) are improper for this additional reason.

3. There reasonable expectation of success in combining Benson with Titus.

Even if Benson or Titus provided some suggestion or motivation for their combination, one still in the art would have no reasonable expectation of success and the combination. The system of Titus is specifically designed for gaseous fluids, such as natural gas, since it relies upon a pressure differential between the fluid in the supply pipe in the fluid in the demand pipe to measure the volume of fluid passing from the supply pipe to the demand pipe. *See, e.g.*, Titus, c. 6, ll. 34-52, c. 13, ll. 35-44. By contrast, the fluid cart of Benson is designed to distribute liquids, such as hydraulic fluids and oils, through a hose 55 using a vacuum pump 25 (*See* Benson, Fig. 1, c. 3, ll. 42-44 (describing a check valve 42 that "is normally closed but

opens when removal of fluid from tank 10 creates negative pressure"). Clearly, neither the fluid in the hose 55 (which presumably is open to the air) or in the tank 10 is under any significant positive pressure while fluid is being dispensed from Benson's cart. Accordingly, Titus's method of using pressure differentials to measure fluid flow (which likely would not work with a liquid in any event) would be entirely ineffective in Benson's cart, due to the lack of any pressure differential between Benson's tank and the end of the hose.

Hence, for at least this reason, one skilled in the art would have no reasonable expectation of success when attempting to combine Benson with Titus. Accordingly, the office action fails to meet this requirement for a sound rejection under § 103(a), and the applicant respectfully requests reconsideration of the rejections of claims 10-38 and 53-58 for this reason as well.

CONCLUSION

In view of the foregoing, the Applicant believes all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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